In The High Court of Judicature at Madras

Dated 07.09.2006

Coram

THE HONOURABLE MR. JUSTICE P. JYOTHIMANI

W.P.No.31405/2006 & M.P.No.1/2006

Dr.V.S.Poyyamozhi .. Petitioner

Vs

1.The Government of Tamil Nadu rep.,
By Secretary to Government,
Animal Husbandry and Fisheries Department,
Secretariat, Chennai 600 009.

2.The Commissioner and Director of Veterinary Services,
Chennai 600 006. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records of the 2nd respondent in proceedings Na.Ka.No.27160/L1/2003 dated 7.2.2005 and all other related proceedings and quash the same and to direct the 1st respondent to regularise the period of suspension from 13.4.2003 to the date of reinstatement in service as duty period for all purposes with all consequential service and monetary benefits within a limited time frame.

For Petitioner : Mr.M.Ravi
For Respondents: Mr.A.Edwin Prabhakar, GA

ORDER

This writ petition is filed challenging the impugned charge memo issued by the 2nd respondent dated 7.2.2005 under which three charges were framed against the petitioner which include that the petitioner who was under suspension has given a false complaint as if the Maruthi 800 bearing Registration No.TN 27 P 8980 belonging to his friend Dr.Selvaraj was lost and by registering such a case, he has created a document to obtain a sum of Rs.1,90,000/- from the Insurance Company, that in respect of the car belonging to his friend, he has used the same without registration number plate, as if it belonged to him and thereby cheated the Police Department and lastly, that he

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attempted to sell the said car which is stated to have been stolen along with one Gunasekaran.

2.The case of the petitioner is that he has worked as Veterinary Assistant and he was placed under suspension on 1.7.03 with effect from 13.4.2003 on the basis that a criminal case has been filed against him in respect of the above said charges and he was arrested, which are the subject matter of the disciplinary proceedings, which are in challenge.

3. After trial, the criminal Court has acquitted the petitioner as it is seen in the Judgment of the learned Judicial Magistrate Court, Salem in C.C.No.12/2003 dated 31.3.2005. It is also the case of the petitioner that after the criminal Court has acquitted the petitioner, the suspension order was revoked by the respondents on 19.01.2006. Inspite of that, the suspension period has not been regularised.

4. In the meantime, on the same set of charges, which were the subject matter of the criminal case in which the petitioner was acquitted, the present impugned charge memo has been issued which is challenged mainly on the ground that once the criminal Court, on contest and trial, found that the petitioner was not involved in the said charges, it is not fair for the department to proceed against him in the disciplinary enquiry on the same set of charges, for the department is not going to investigate more than what was done by the criminal Court.

5. To substantiate his contentions, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court rendered in G.M.Tank Vs. State of Gujarat and other reported in 2006 (3) ctc 494. That was a case wherein, on the same set of facts and circumstances, when the Criminal Court has acquitted the person and subsequently, the department has proceeded with disciplinary enquiry against the petitioner therein on the same set of charges. While proceeding with the departmental enquiry, the department has failed to take into consideration the order of acquittal passed by the criminal Court which was done after the contest. It was in

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those circumstances, the Hon'ble Supreme Court has held that it is not fair for the department to brush aside the finding given by the Criminal Court especially when the charges are admittedly one and the same. The relevant passage of the Judgment of the Hon'ble Supreme Court placing reliance on the earlier judgment in Paul Anthony's case reported in 1999 (3) SCC 679, is as follows:

> "It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being nay iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendancy of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's Case (supra) will apply."

6. However, in the present case, the facts and circumstances would show that it is only initial stage of framing of charges. Even though it is true that the charges are the same as that of the charges in the criminal case which has ended in acquittal on 31.3.2004, it is always open to the petitioner to give explanation to the respondents bringing to the notice of the respondents as to how the same set of facts and circumstances were placed before the criminal Court. Even before that, I do not think that it is appropriate for this Court to interfere against the charge memo.

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7. Making it clear that in case where the petitioner is able to make out the case that the charges framed in the criminal case which has ended in acquittal are exactly the same as the charges framed in this case, it is for the respondents to take note of the situation especially in the light of the judgment of the Apex Court reported in 2006 (3) CTC 494 and pass appropriate orders. It is due to the reason that, as pointed out by the Apex Court, when once the criminal Court has held that the petitioner is not involved in the case and subsequently acquitted, it is for the respondents to come to the conclusion on the specific issues which are in the form of charges. I do not think that the Department can go beyond that.

8. It is also brought to my notice by the learned counsel for the petitioner that in respect of the above said facts, in fact the petitioner has brought to the notice of the 2nd respondent by his representation dated 13.2.2006. In respect of the plea of regularisation of service of the petitioner for the period of suspension, viz., between 1.7.2003 which was with effect from 13.4.2003 to 19.1.2006. The learned counsel would place reliance on Ruling 9 under FR 54B which reads as follows:

> "9. Where a Government Servant is:-
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> (a) Placed under suspension in view of the fact that a complaint against him of any criminal offence is under investigation or trial; or
>
> (b) dismissed or removed from service or compulsorily retired on the ground of conduct which has led to his conviction on a criminal charge and
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> the Government servant is subsequently reinstated in service on his acquittal by the Court either on merits or on the ground that the charge has not been proved against him or by giving benefits of doubt or on any other technical ground or on the ground that he has been pardoned by the Court as he turned approver based on his judicial confession, he must be regarded as having been prevented from discharging his duties and the period of his absence including the period of suspension shall be treated as duty for all purposes and he shall be paid

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full pay and allowances which he would have been entitled to, had he not been under suspension, or dismissed or removed or compulsorily retired from service."

9. I have heard the learned counsel for the petitioner and the learned Government Advocate taking notice on behalf of the respondents.

10. The said rule provides for a regularisation of service in cases where subsequently the criminal Court has acquitted the Government servant who was placed under suspension and which was subsequently revoked. It is seen that the petitioner has not made any representation in respect of the same, even though the learned counsel would submit that applicability of the Rule 54B is automatic and there is no need for any representation.

11. On the other hand, the learned Government Advocate submitted that in the event of the petitioner making such representation stating his claim in accordance with the rule, the same may be considered and necessary orders will be passed.

12. The writ petition is disposed of with the following direction:

"a) The petitioner is permitted to make a representation to the 2nd respondent in respect of the regularisation of services for the period of suspension, viz., 1.7.03 with effect from 13.4.2003 to 19.1.2006 and the receipt of the same, the 2nd respondent shall consider the said representation and pass appropriate orders within a period of four weeks from the date of receipt of such representation.

b) The petitioner is also directed to submit his explanation to the impugned charge memo within a period of two weeks from the date of receipt of a copy of this order and on the petitioner submitting such explanation, the 2nd respondent shall conduct an enquiry in accordance with law taking into consideration the above said

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facts including the judgment of the Apex Court and pass appropriate orders after giving sufficient opportunity to the petitioner within a period of four weeks from the date of receipt of a copy of this order."

No costs. Consequently, connected M.P.is closed.

ap

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Secretary to Government,
Animal Husbandry and Fisheries Department,
Government of Tamil Nadu, Secretariat, Chennai 600 009.

2.The Commissioner and Director of Veterinary Services,
Chennai 600 006.

+ one cc to the Government Pleader sr no. 41415

PV(CO)
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